

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**JAMES E. WASHINGTON, Jr.,**

Plaintiff,

**-vs-**

**Case No. 10-C-4**

**JOHN HIVELY,**

Defendant.

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**DECISION AND ORDER**

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James Washington claims that he suffered emotional distress due to being unlawfully strip-searched by Officer John Hively at the Waukesha County Jail. In advance of trial, Washington filed three motions in limine. Officer Hively opposes only the first.

Washington argues that Officer Hively should not be allowed to present evidence that he was being held on a federal drug conspiracy charge at the time of the assault. However, this evidence is relevant because the stress related to facing drug conspiracy charges could have been the source of some, if not all, of Washington's emotional distress. In particular, the fact that Washington was charged with conspiracy is relevant because of the stress that could be linked to testifying against his co-conspirators. The probative value of this evidence is not outweighed by the danger of unfair prejudice. Fed. R. Evid. 403. Obviously, due to the facts of this case, the jury will deduce that Washington was in jail for one reason or another. The exact

reason for Washington's incarceration hardly seems to matter.

Also, the Court does not think that this evidence qualifies as inadmissible "other acts" evidence. Fed. R. Evid. 404(b)(1) ("Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character"). As noted above, the evidence is not meant to show propensity. *United States v. Howard*, 692 F.3d 697, 703-04 (7th Cir. 2012) ("Evidence of prior convictions is not admissible to show a defendant's propensity to commit a crime, nor to show that he or she acted in conformity with that propensity on the occasion in question"). Instead, it is meant only to confront the damages element of Washington's claim.

Washington's first motion in limine [ECF No. 61] is **DENIED**. The other two [ECF Nos. 62, 63] are **GRANTED**.

Dated at Milwaukee, Wisconsin, this 30th day of September, 2013.

**BY THE COURT:**

  
HON. RUDOLPH T. RANDA  
U.S. District Judge